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December 3, 2008

Larry D. Bowling
C/O National Transportation Safety Board
Office of Marine Safety
490 L'Enfant Plaza East, S.W.
Washington, DC 20594

By Overnight Delivery

Re: Follow-Up Questions to SFBPA

Dear Mr. Bowling:

This letter responds to your e-mail dated November 12, 2008. The numbered paragraphs below correspond to the numbered questions in your email.

1. The Selection Board members who were not part of the Drug Abatement Committee ("DAC") were drawn from members of the SFBP who happened to be present at Pier 9 for other reasons when a Selection Board was being assembled. For example, a pilot on his way to or from a piloting assignment might be called upon, or a pilot who was at Pier 9 for some other meeting might be asked to serve. There are no records by which we can identify non-DAC members serving on Selection Boards prior to 2008.

The DAC members serving on Selection Boards would have sometimes done so on their time off duty. For those who came to Pier 9 for this purpose during their time off, they would have been entitled to "compensatory time" that is recorded daily as it is accumulated. If it is crucial for you to know which DAC members served on Selection Boards, we could go through the daily compensatory time logs and see who recorded service for the DAC/Selection Boards. This listing would be incomplete, as it would not include the DAC members who served on Selection Boards during their periods on duty. We also believe that some DAC members who served on Selection Boards during their time off duty probably did not claim compensatory time credit. Nevertheless, we are willing to examine these records if you feel it is sufficiently important to engage in the time-consuming review that would be required. Please let me know.

2. According to Captain Sean Gabe, a member of the DAC for several years who was appointed to chair the DAC in late 2007, if the name of a member of the Selection Board was drawn randomly for testing, he or she would have known it immediately, because he or she would have been present along with other members of the Selection Board when the random draw took place. No separate notice would have been

required. I should also point out that selection and notice responsibilities have been placed the hands of an outside, independent contractor effective January 1, 2009.

3. There has only been one positive drug test of a pilot, which occurred in December, 1990. Those test results were reported to the Coast Guard, but we have no information that would tell us whether the results were reported to the Coast Guard by the MRO, or by the SFBP. The pilot involved was not Captain Cota.

There have been two positive tests of employee crew members from the pilot boats. The first was a post incident positive drug test. The second was a reasonable suspicion alcohol test. In both cases, the SFBP reported the results to the Coast Guard. We do not know if the MRO also reported to the Coast Guard. The SFBP has not given the MRO any instructions about reporting to the Coast Guard.

According to the long-time secretary for the SFBP Port Agent, all test results were reported to the DAC by mail until about 2000. She is unsure of the exact date that notification procedures changed, but she believes it was in 2000, at which time the MRO was instructed to fax all test results to the fax machine in the Port Agent's office. Using that notification procedure, the Port Agent and his secretary would have received positive test results directly from the MRO. The reason the change was made was that test results arriving by mail addressed to the DAC would already be a day or sometimes several days old when they arrived, and then they would sometimes sit for days before being opened by the DAC. The notification process was therefore changed so that the Port Agent would know immediately if there were any positive test result.

4. Of the four documents attached to your e-mail of November 12, 2008, only the July 19, 1999 letter from Dr. Blackstone was in the SFBP's files. The July 19, 1999 letter refers to Captain Cota having serious chronic depression, Cota's treatment with anti-depressants, an earlier recommendation that Cota needed to take time off from work, and that "John was hospitalized at St. Helena's and had some medical and other problems successfully addressed as well." There is no mention of a DUI or any alcohol related problems or hospitalization related to alcohol treatment. There is also reference to an earlier letter, dated January 15, 1999. None of the officers or employees of the SFBP recall ever seeing the letter of January 15, 1999 referred to in the letter of July 19. We have called Dr. Blackstone's office twice in recent weeks and left messages requesting a copy of the January 15, 1999 letter, but he has not returned the calls. We are troubled by the absence of the January 15, 1999 letter from the SFBP's files, and would encourage the NTSB to use its subpoena powers to obtain it from Dr. Blackstone.

The October 21, 1999 letter was not in the SFBP's files. However, it is an ordinary "sea time" letter written for every pilot renewing his or her federal license on the normal five-year renewal cycle. Cota was reapplying on his normal licensing schedule. Nothing in or about the letter suggests anything unusual.

The November 4, 1999 letter was not in the SFBP's files, and it is very unusual. I sent a copy of the letter to Captain Nyborg after receiving it from you, and he denies having ever seen it. The letter does not mention a DUI, but does refer to a "vehicular incident" one might infer Cota was involved in that, apparently, "willfully or recklessly endanger[ed] the safety or property of another person." This obscure, ambiguous phraseology is odd---if the author knew of a DUI, why not just say so? Captain Nyborg said he not only does not recall any such letter, but it does not sound like something he would write. The employee that was Nyborg's secretary for many years confirms that it sounds not at all like anything Captain Nyborg might have written. She also says she did not write the letter for him and has never seen the letter herself. Perhaps most interesting, Captain Nyborg's personal calendar from 1999 indicates that he had been on the east coast for about two weeks vacationing and then attending a meeting of the American Pilots Association, not arriving back in California until November 4, 1999, the date on the mystery letter. The records of the SFBP confirm Nyborg's absence and indicate that someone else, Captain Bill Greig, was serving as Port Agent on November 4, 1999. Captain Greig most certainly did not write the letter. The signature on the letter is at least similar to Captain Nyborg's. Do you know if the original of the letter is available in the Coast Guard's files? Please let me know, as the November 4, 1999 letter is of questionable origin. I hypothesize that it is one or the other of the following: (1) An outright forgery on stolen SFBP letterhead, perhaps using Nyborg's signature stamp that was available in the Port Agent's office; or (2) something drafted by Captain Cota, who perhaps obtained Captain Nyborg's signature on November 5 by misrepresenting the purpose of the letter and the nature of the "vehicular incident", and that Captain Nyborg has simply forgotten signing the letter with the passage of nine years. In either case, the letter does not reflect knowledge of a DUI conviction by Nyborg or the SFBP.

The November 30, 1999 memorandum to the file by Lt. Henderson of the Coast Guard was not in the SFBP's files. None of the officers or employees of the SFBP, including Captain Nyborg, had seen that document until you provided it.

We have searched the records of the Board of Pilot Commissioners ("BOPC") and of the SFBP, including minutes of monthly meetings of the membership, monthly meetings of the SFBP Policy Committee, correspondence files and the personnel files for Captain Cota. Here is what the records show:

1. Cota was on normal time off until January 7, 1999, and did not return to work that day due to reported illness.
2. The minutes of the January 13, 1999 Policy Committee meeting state that "J. Cota will report status of his illness and prognosis after he sees his physician this week." Presumably, this led to the letter of January 15, 1999 referred to in Dr. Blackstone's letter of July 19 that year, but we do not have a copy of the January 15, 1999 letter. As indicated above, we are eager to see it.

3. The minutes of the BOPC dated February 25, 1999 indicate a report by Captain Nyborg to the BOPC that "Captain Cota is off sick and will be off the board [not working] for another month."

4. The minutes for the March 10, 1999 meeting of the Policy Committed say: "No prognosis for return of J. Cota [or a second, injured pilot] at this time."

5. The minutes for the March 24, 1999 Policy Committee meeting say: "P. McIsaac initiated discussion of sick leave policy. The rules provide for independent medical review of a pilot's illness/injury status every three months. The pilot on sick leave chooses a doctor from three named by the Port Agent, who reviews the pilot's condition and reports to the Policy Committee."

6. On April 1, 1999, Captain Nyborg sent a letter to Cota containing the following: "At a recent Policy meeting it was decided that, under our Sick Leave Policy, Rule #6, you must submit to an examination every three months of your sick leave. Dr. Calza [a BOPC physician] has furnished me with four names of Board certified psychiatrists. You may choose any one and have the doctor send the report to me." The names of the four psychiatrists recommended by Dr. Calza are listed at the end of the letter.

7. By letter dated April 21, 1999, one of the psychiatrists recommended by Dr. Calza wrote to Captain Nyborg confirming a prior diagnosis by Dr. Blackstone severe enough to prevent Captain Cota from working.

8. The July 19, 1999 letter from Dr. Blackstone recaps the diagnosis of serious chronic depression made in January, 1999. However, the letter concludes that "John can return to his duties in a graduated step wise fashion and is 'fit for duty'."

9. Cota continued on sick leave status until July 31, 1999. From August 1 until August 10, 1999, Cota was off work, but not collecting sick leave benefits.

10. By letter dated August 9, 1999, stamped "received" by the SFBP on August 16, 1999, an orthopedic surgeon sent a letter to Captain Nyborg indicating that Cota had recently undergone surgery and would be disabled from work for two to three months.

11. Cota was returned to sick leave status as of August 10, 1999.

12. SFBP records contain a note from an orthopedic physician dated December 28, 1999, stating that Cota had recovered from his surgery and would be ready to return to work on January 12, 2000.

13. Cota did return to work on January 12, 2000.

The foregoing described records document Cota's absence from piloting for confirmed medical reasons throughout 1999, first for depression, and later for surgery and recovery from the surgery. The general membership of the SFBP was not aware of Cota having been arrested or convicted of DUI, nor was the Policy Committee made aware of the DUI. The only inkling that anyone might have known is the November 4 letter that makes vague reference to a "vehicular incident." Captain Nyborg denies having written the letter and denies having any knowledge in 1999 or 2000 of Cota having a DUI. We have no reason to doubt Captain Nyborg. I should point out that Cota had reason to keep the DUI a secret, to insure that he would continue to receive sick leave benefits.

Finally, I should also point out that the Coast Guard was apparently aware of the DUI, even though the SFBP was not, and that its knowledge apparently affected the Coast Guard's decision regarding the timing of renewal of Cota's license. I am not aware of any disciplinary rule or licensing criteria of the BOPC that would have been triggered by knowledge of an off-duty DUI. The BOPC physician, Dr. Calza, was apparently made aware of the medical reasons for Cota's absence from work beginning early in 1999. I do not know what the BOPC might have done differently had it had also known what the Coast Guard knew about a DUI. I have no reason to believe the BOPC's actions would have changed.

I think this answers each of your questions, but if not, please let me know and I will endeavor to fill in the gaps.

Very truly yours,



Kevin Q. Davis

cc: SFBP